

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 366 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI PUNJABHAI KHEDIA

Versus

EXECUTIVE BOARD OF METHODIST CHURCH IN SOUTHERN ASIA

Appearance:

MR BA SURTI for Petitioner

MS HEMALI M DAVE for MC BHATT for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/10/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 30th April, 1981, passed by the learned Extra Assistant Judge, Vadodara, in Regular Civil Appeal No. 75/78, arising of the judgment and order dated 20th November, 1977, passed by the learned Joint Civil Judge

(JD) Vadodara, in Regular Civil Suit No. 319/70. The appellant before this court is the defendant.

The plaintiff is a constituted Attorney of one Reverend J.B.Satyavirtha, the Secretary of the Executive Board of the Methodist Church in Southern Asia. The plaintiff sued the defendant for recovery of the premises situated within the premises of the Methodist Church at Vadodara. It was the case of the plaintiff that one Punja Khedia was serving in the Church as Suvastik Kamdar, and while in service, he was allotted a residential quarter comprising of two rooms, kitchen etc. within the precincts of the Church. After passing away of the said Punjabhai, his widow Shantaben was permitted to occupy the suit premises in her life time. For such occupation, said Shantaben was charged Rs.7/- PM as facility charges like water connection, drainage connection etc. The said Shantaben passed away in the year 1967. The defendant who is the son of late Punjabhai and Shantaben, who was residing with late Shantaben during her life time, continued to occupy the suit premises. The defendant had no right to reside in the suit premises and was a trespasser. He was, therefore, called upon to hand over the vacant possession of the suit premises. However, the defendant neglected to do so. Therefore the suit.

The suit was duly contested by the defendant by filing his written statement at Ex. 30. It was contended that the suit instituted without the permission of the Charity Commissioner was not maintainable; that the plaintiff had no locus to institute the suit. It was denied that the facility charge of Rs.7/- was charged from the late Shantaben. It was contended that the late Shantaben was a tenant in the suit premises and she used to pay rent of Rs.7/- PM for the suit premises. The defendant being her son residing with her, was entitled to occupy the suit premises as a tenant, and that the suit was instituted with a view to increasing the rent.

The learned trial Judge held that the suit instituted without the permission of the Charity Commissioner was competent; that the plaintiff had locus to institute the suit; that the late Shantaben was a tenant in the suit premises and the defendant had a right to occupy the suit premises as a tenant. In view of the above findings recorded by the learned trial Judge, under the judgment and order dated 28th November, 1977, the suit was dismissed. Feeling aggrieved, the plaintiff preferred the Regular Civil Appeal No. 75/78. The lower

appellate court by its judgment and order dated 30th April, 1981, reversed the findings of the learned trial Judge and held that late Shantaben was a licensee in the suit premises and the defendant had no right to continue to be in possession in the suit premises. Accordingly, by the judgment and order dated 30th April, 1981, the appeal was allowed. The suit was decreed and the defendant was ordered to handover the actual vacant possession of the suit premises on or before 31st October, 1981. The plaintiff was ordered to make an application for mesne profit under Order-20 Rule 12 CPC. Feeling aggrieved, the defendant has preferred the present Second Appeal.

The following questions of law have been framed by this court :

- (1) Whether in the facts and circumstances of the case, the lower appellate court erred in holding that the suit is maintainable without the permission of the Charity Commissioner as required under section 50 read with section 51 of the Bombay Public Trusts Act, 1950 ? Because the plaintiff trust is a registered Public Trust under the Bombay Public Trust Act, 1950.
- (2) Whether in the facts and circumstances of the case, the lower appellate court erred in holding that the court has jurisdiction inspite of the fact that the appellate court itself has framed the issue whether the deceased mother of the defendant i.e. Shantaben was a licensee or a tenant of the suit block.

Mr. Surti has submitted that the defendant in his written statement had raised a plea that the late Shantaben-the mother of the defendant was a tenant in the suit premises and the defendant as was residing with the late Shantaben, was a tenant under section 5 (11) (c) of the Bombay Rent Act and the ordinary civil court had no jurisdiction to entertain the suit. In support of his contention, he has relied upon the judgment of this court in the matter of SHANTUKUMAR LAXMIKANT SHARMA VS SHAH KUMUDCHANDRA VALCHANDBHAI (1986 {1} GLR 232). In the said matter, the appellant was sued in the civil court for possession of the suit premises on the basis that the appellant was a trespasser. The appellant however claimed right to tenancy under section 5 (11) (c) of the Bombay Rent Act on the ground that he was the grand-son

of the tenant and was residing with the tenant. The court extensively relied upon the judgment of the Hon'ble Supreme Court in the matter of Topandas VS M/s Gorakhram (AIR 1964, SC 1348). The court however held that- "since the defendant had claimed tenancy under section 5 (11) (c) of the Rent Act, the court referred to in section 28 of the Bombay Rent Act alone had jurisdiction to try the suit." Considering the principles laid down by the Supreme Court in the matter of Topandas (supra), I am of the view that the above referred judgment shall have no applicability to the facts of the present case. In the above matter, the appellant had claimed tenancy through one Pandit Joravarlal Ramlal who admittedly was tenant of the suit premises. In the present case, the defendant has claimed tenancy through late Shantaben who is alleged to be a licensee and not a tenant. Hence, in my view, and as held by the Hon'ble Supreme Court in the matter of Topandas (supra), the ordinary civil court shall also have jurisdiction to try the suit. In the matter of Topandas (supra), a similar question arose, whether the City Civil Court at Bombay had jurisdiction to try the suit, where the plaintiff claimed that the defendants were the licensees and prayed for a declaration that the defendants were not entitled to enter into or remain in possession of the suit shop. The defendants asserted that they were the tenants and raised a plea that the City Civil Court at Bombay had no jurisdiction to try the suit, and that the only court which had jurisdiction to try the suit was the one mentioned in section 28 of the Bombay Rent Act. While dealing with this question, the Hon'ble Supreme Court quoted the judgment of Allahabad High Court (Ananti VS Channu (AIR 1930, ALL. 193 {FB}) with approval as follows : " The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts, he will get his relief from the forum chosen. If he frames his suit in a manner not warranted by the facts and goes for his relief to a court which can not grant him relief on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper court, for the plaint, as framed, would not justify the other kind of court to grant him the relief If it is found on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendants are true, and that the case is not cognisable by the court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper court. If, on the other hand, it is found

that having regard to the nature of the suit, it is not cognisable by the class of court to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety." The Hon'ble Supreme Court further held that - " We do not think that the section says or intends to say that the plea of the defendant will determine or change the forum. It proceeds on the basis that exclusive jurisdiction is conferred on certain courts to decide all questions or claims under the Act as to parties, between whom there is or was a relationship of landlord and tenant. It does not invest those courts with exclusive power to try questions of title, such as questions as between the rightful owner and a trespasser or a licensee for such questions do not arise under the Act. If, therefore, the plaintiff in his plaint does not admit a relation which would attract any of the provisions of the Act on which the exclusive jurisdiction given under section 28 depends, we do not think that the defendant by his plea can force the plaintiff to go to a forum where on his averments he can not go. The interpretation canvassed for by the appellants will give rise to anomalous results, for example, the defendant may in every case force the plaintiff to go to the court of Small Causes and second, if the Court of Small Causes finds against the defendant's plea, the plaint may have to be returned for presentation to the proper court for a second time. but when one has regard to the provisions in Part II it seems reasonably clear that the exclusive jurisdiction conferred by section 28 is really dependent on an existing or previous relationship of landlord and tenant and on claims arising under the Act as between such parties. The Hon'ble Supreme Court has also quoted the judgment of the Bombay High Court (Govindram Salamatrai {AIR 1951 BOM 390}) with approval It held that - " Therefore, the question that I have to address myself to is whether the question as to whether the defendant is a tenant or a licensee is a question which arises out of the Act or any of its provisions. Really, this question is not a question that has anything to do with the Act or any of its provisions. It is a question which is collateral and which has got to be decided before it could be said that the Act has any application at all. " A similar view has been expressed by this court in the matter of BHARVAD CHHOTA BHAGA VS BHARVAD JAGA DAHYA (AIR 1999 GUJ 17). The court has summarised the law as under :

"It is well settled law that jurisdiction of the court is to be determined on the basis of allegations made in the plaint. The pith and

substance of the plaint allegations have to be kept in mind so also pith and substance of the relief sought. It is the choice of the plaintiff to choose his Forum. It is another thing that the plaintiff fails to establish his case before such Forum. However, the jurisdiction of the Forum or the Court of the choice of the plaintiff can not be ousted by the defendant appellant merely by pleading that he is tenant of the plaintiff-respondent. If the plaintiff claims that the defendant was his licensee, then suit for possession from licensee after revocation of license will lie only in the Civil Court. If the plaintiff fails to establish the allegations of license and its revocation, naturally, he will be out of court and the suit is bound to fail. However, the plaintiff can not be compelled for trial of such question to approach rent court merely on the allegation of the defendant in the written statement."

In view of the above well settled proposition of law, it can not be said that the civil court had no jurisdiction to try the suit where the plaintiff had claimed that late Shantaben was a licensee in the suit premises and that the license stood terminated with the death of late Shantaben. In my view, therefore, the ordinary civil court had jurisdiction to entertain and try the suit.

Mr. Surti has also submitted that the suit at the hands of the plaintiff was not maintainable i.e. the Executive Board of the Methodist Church had vested the power in its constituted Attorney Rev. S.B.Satyavirtha and the said delegate should not have further delegated the power to Shri Samuel V. Christian, the plaintiff. I am afraid this question also is not open to be agitated by the defendant. The issue was decided in favour of the plaintiff by the trial court which decision was not challenged by the defendant by preferring an appeal or cross objection in the appeal preferred by the plaintiff. The said decision has thus become final and can not be agitated in the present Second Appeal. Besides, I see no substance in this contention either. It is proved that the constituted Attorney Rev. S.B.Satyavirtha was specifically empowered to delegate his powers further. In view of the express authority conferred upon the constituted Attorney Rev.S.B.Satyavirtha, the power conferred upon the plaintiff can not be said to be unauthorised and the plaintiff was, therefore, entitled to bring the suit. The suit at the hands of the

plaintiff was, therefore, competent.

As regards the first question, Ms. Dave has relied upon the judgment of this court in the matter of NADIAD NAGARPALIKA NADIAD VS VITHALBHAI ZAVERBHAI PATEL (1980 {21} GLR 792). A similar question raised before the court was negatived. Even otherwise, in my view, the question is not open for consideration in this Second Appeal. It may be noted that the issue was raised by the trial court and was answered against the defendant. The trial court was of the clear opinion that " there is no alleged breach of public trust, nor there is anything pertaining to trust so as to arrest the provisions of sections 51 and 51 of the Public Trust Act. As I observed this suit is a suit filed by trust, though its constituted attorney alleging that defendant is a trespasser. Hence, the suit in my humble opinion is maintainable. Hence my finding on above issue is in negative. " The aforesaid decision was not challenged in appeal by the defendant, nor did the defendant prefer cross-objections in the appeal preferred by the plaintiff. Thus, the decision on the said issue has become final and is not open to the defendant to agitate the same in this Second Appeal.

No other contention is raised before me.

In view of the above discussion, the appeal fails and is dismissed with costs through out.

Learned advocate Mr. Surti prays that this decision be stayed so as to enable the appellant-defendant to prefer appeal before the Hon'ble Supreme Court. The request is granted. The execution of this decision is stayed for a period of 8 weeks from today so as to enable the appellant-defendant to effectively pursue the remedy of appeal before the Hon'ble Supreme Court.

[Ms. R.M Doshit, J.]

JOSHI